

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHWESTERN DIVISION**

Peak North Dakota, LLC, a Colorado )  
limited liability company, Peak Energy )  
Resources, LLC, a Delaware limited )  
liability company, Jack Vaughn, Alex )      **ORDER**  
McLean, and Matt Gray, )  
)  
Plaintiffs, )  
)  
vs. )      Case No. 4:08-cv-087  
)  
Wilbur Wilkinson, Standing Bear )  
Traders, LLC, a North Dakota limited )  
liability company, and the Three Affiliated )  
Tribes, Fort Berthold District Court, )  
)  
Defendants. )

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Before the Court is the Plaintiff's Motion to Dismiss Counts I, II, and V of Standing Bear Traders, LLC's (SBT) First Amended Counterclaim or, in the Alternative, for More Definite Statement filed on June 3, 2010. See Docket No. 121. The Plaintiff's argue in their motion that the claims for Fraud (Count I), Rescission (Count II), and Punitive Damages (Count V) in the First Amended Counterclaim lack the degree of particularity required by the federal rules. SBT filed a response in opposition to the motion on June 24, 2010. See Docket No. 124. Along with its response SBT filed a motion in the alternative requesting leave to file a Second Amended Counterclaim. See Docket No. 125. A proposed Second Amended Counterclaim was attached to the response/alternative motion. See Docket No. 124-1. The Plaintiffs filed a reply brief on July, 6, 2010. See Docket No. 126. In their reply the Plaintiffs agree that the proposed Second Amended

Counterclaim contains sufficient particularity to permit a proper answer. They suggest the motions be resolved by ordering SBT to file its proposed Second Amended Counterclaim.

Accordingly, the Motion to Dismiss or in the Alternative for a More Definite Statement (Docket No. 121) is **DENIED** as to the Motion to Dismiss and **GRANTED** as to the Motion for a More Definite Statement. The Motion for Leave to File a Second Amended Counterclaim (Docket No. 125) is **GRANTED**. SBT shall file its Second Amended Counterclaim within seven days of the date of this Order.

**IT IS SO ORDERED.**

Dated this 8th day of July, 2010.

*/s/ Daniel L. Hovland*

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Daniel L. Hovland, District Judge  
United States District Court